

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

IN RE:

December 21, 2001

**COMPLAINT OF BELL SOUTH
TELECOMMUNICATIONS, INC. REGARDING
THE PRACTICES OF GLOBAL CROSSING
TELECOMMUNICATIONS, INC. IN THE
REPORTING OF PERCENT INTERSTATE
USAGE FOR COMPENSATION FOR
JURISDICTIONAL ACCESS SERVICES**

DOCKET NO.
01-00913

ORDER HOLDING DOCKET IN ABEYANCE

Procedural History

BellSouth Telecommunications, Inc. (“BellSouth”) filed its *Complaint* against Global Crossing Telecommunications, Inc. (“Global Crossing” or “GCTI”) with the Tennessee Regulatory Authority (the “Authority”) on October 19, 2001. At the regularly scheduled Authority Conference held on October 23, 2001, the Directors of the Authority ordered that Global Crossing’s response to BellSouth’s *Complaint* be filed no later than November 2, 2001, that the General Counsel or his designee be appointed as Hearing Officer on the merits, and that this matter “be resolved within 60 days.”¹ On November 8, 2001, the Hearing Officer issued an *Order Establishing Procedural Schedule* setting this matter for a hearing on the merits on December 11, 2001.

On November 9, 2001, the parties filed a *Joint Motion to Set Aside Procedural Schedule and Convene Pre-Hearing Conference*, in which the parties requested that the

¹ Transcript of Authority Conference, October 23, 2001, p. 25.

Hearing Officer set aside the November 8, 2001 *Order Establishing Procedural Schedule*. On November 13, 2001, Global Crossing filed a *Motion for Extension of Time* requesting a two-day extension of time for filing discovery and an issues list. On November 15, 2001, the Hearing Officer issued an *Order Denying Joint Motion to Set Aside Procedural Schedule*, in which the Hearing Officer denied the parties' *Joint Motion* but granted Global Crossing's *Motion* for a two-day extension of time.

On November 16, 2001, the parties filed a *Joint Appeal of Hearing Officer's Order Denying Joint Motion to Set Aside Procedural Schedule* (the "*Joint Appeal*"). Additionally, on November 16, 2001 Global Crossing filed *Global Crossing Telecommunications, Inc.'s Motion to Dismiss BellSouth's Complaint or, In the Alternative, To Hold in Abeyance BellSouth's Complaint* (the "*Motion to Dismiss*"). At the regularly scheduled Authority Conference held on November 20, 2001, the Authority granted the parties' November 16, 2001 *Joint Appeal*.² Thereafter a Status Conference was held on November 29, 2001 wherein the parties agreed to a revised procedural schedule. On December 5, 2001, the Hearing Officer issued an *Order Revising Procedural Schedule*, in which this matter was scheduled for a hearing on the merits on February 20, 2002.

BellSouth filed its response to the Motion to Dismiss (the "*Response*")³ on December 6, 2001. Global Crossing filed a reply (the "*Reply*")⁴ to BellSouth's *Response* on December 10, 2001. Thereafter, a Pre-Hearing Conference was conducted on

² Transcript of Authority Conference, November 20, 2001, p. 26.

³ *BellSouth Telecommunications, Inc.'s Opposition to Global Crossing Telecommunications, Inc.'s Motion to Dismiss BellSouth's Complaint or, In the Alternative, To Hold in Abeyance BellSouth's Complaint*, December 6, 2001.

⁴ *Global Crossing Telecommunications, Inc.'s Reply to BellSouth Telecommunications, Inc.'s Response to Global Crossing's Motion to Dismiss BellSouth's Complaint and Request to Dismiss BellSouth's Complaint or, In the Alternative, To Hold in Abeyance BellSouth's Complaint*, December 10, 2001.

December 11, 2001, at which the parties presented oral argument regarding Global Crossing's *Motion to Dismiss*. The following parties were in attendance at the Pre-Hearing Conference:

BellSouth Telecommunications, Inc. – **Joelle Phillips, Esq.** (argued), **Mr. Jim Gotto**; 333 Commerce St., Suite 2101, Nashville, TN 37201-3300

Global Crossing Telecommunications, Inc. – **Steven A. Augustino, Esq.** (argued); 1200 19th Street, N.W., Suite 500, Washington, DC 20036; **Henry Walker, Esq.**; 414 Union St., Suite 1600, Nashville, TN 37219

Discussion

In its *Motion to Dismiss*, Global Crossing requests that the Hearing Officer dismiss BellSouth's *Complaint*, or, in the alternative, hold BellSouth's *Complaint* in abeyance until after the conclusion of an action Global Crossing filed on October 11, 2001 in the United States District Court for the Northern District of Georgia, seeking a declaratory judgment against BellSouth. Global Crossing filed a copy of its complaint in the District Court as an attachment to its *Motion to Dismiss*.⁵

BellSouth states in its *Response* that it “does not object to staying further proceedings in this matter until BellSouth’s motion to dismiss is resolved by the federal court.”⁶ BellSouth states, however, that it “vehemently opposes any dismissal of the present matter or any stay until the final outcome of the federal case.”⁷

In its *Reply*, Global Crossing restates its request that the Hearing Officer “stay this entire proceeding until the conclusion of the federal case.”⁸ Global Crossing cites a

⁵ *Global Crossing Telecommunications, Inc. v. BellSouth Telecommunications, Inc.*, United States District Court for the Northern District Of Georgia, Atlanta Division, No. 1:01-CV-2706, p.18, attached as Exhibit A to Global Crossing's *Motion to Dismiss*.

⁶ *Response*, pp. 18-19.

⁷ *Id.*, p. 19.

⁸ *Reply*, p. 2.

purportedly similar case pending before the Florida Public Service Commission (“FPSC”) in which the pre-hearing officer, on November 21, 2001, granted a request for a stay of proceedings before the FPSC pending a ruling on one issue by the Federal Communications Commission.⁹ In addition, Global Crossing submitted with its *Reply* a copy of a December 7, 2001 order of the North Carolina Utilities Commission (“NCUC”). In that order, the NCUC determined to hold in abeyance a complaint by BellSouth against Global Crossing, which appears to be similar if not identical to the *Complaint* before the Authority, “pending resolution of BellSouth’s Motion to Dismiss in the earlier-filed action for declaratory judgment and injunctive relief brought by GCTI in the United States District Court in the Northern District of Georgia.”¹⁰ The NCUC further stated:

Should the Motion to Dismiss not be granted, then GCTI may request that the Stay be extended and shall set out the reasons therefor. BellSouth may then respond to GCTI’s filing. Should the Motion to Dismiss be granted, then, upon being so advised, the Chair will proceed to set this matter for hearing.¹¹

At the December 11, 2001 Pre-Hearing Conference, counsel for Global Crossing reiterated Global Crossing’s request that the Hearing Officer dismiss BellSouth’s *Complaint* or, alternatively, stay the *Complaint* “until the federal case has been completed.”¹² Counsel for Global Crossing admitted that the NCUC’s action on BellSouth’s complaint before the NCUC was limited to a stay pending the District

⁹ *Order Granting Motion to Stay*, In re: Complaint by BellSouth Telecommunications, Inc. against Thrifty Call, Inc. regarding practices in the reporting of percent interstate usage for compensation for jurisdictional access services, Florida Pub. Serv. Comm’n, Docket No. 000475 (November 21, 2001), attached to *Reply* as Exhibit B.

¹⁰ *Order Holding Docket in Abeyance Temporarily*, In the Matter of BellSouth Telecommunications, Inc. v. Global Crossing Telecommunications, Inc., North Carolina Utils. Comm’n, Docket No. P-244 (December 7, 2001), p. 2, attached to *Reply* as Exhibit A.

¹¹ *Id.*

¹² Transcript of Proceedings, December 11, 2001, p. 10.

Court's ruling on BellSouth's motion to dismiss the federal case. Counsel stated that Global Crossing's response to BellSouth's motion to dismiss was due "next week," which indicates the week of December 17 through December 21, 2001.¹³

Counsel for BellSouth restated BellSouth's willingness to hold this proceeding in abeyance pending the District Court's ruling on BellSouth's motion to dismiss the federal case. Counsel also stated, however, that BellSouth opposes Global Crossing's request to stay this proceeding pending a final resolution of the federal case.

Conclusion

Based on the foregoing, good cause exists to hold this matter in abeyance pending resolution of BellSouth's motion to dismiss pending in the United States District Court for the Northern District of Georgia. The parties' filings and their statements at the December 11, 2001 Pre-Hearing Conference indicate that common ground exists between the parties' positions regarding a temporary stay of this proceeding; each party, though perhaps for a different reason, appears not to oppose a stay, at least to the point of the District Court's resolution of BellSouth's pending motion to dismiss. In addition, the Hearing Officer believes that the District Court's ruling on BellSouth's motion to dismiss may be instructive to the Hearing Officer in this docket.¹⁴

Upon the District Court's having issued a ruling on BellSouth's motion to dismiss, it shall be the responsibility of the parties to inform the Hearing Officer of the substance of such ruling. At that time, the Hearing Officer will schedule a status

¹³ *Id.*, pp. 11-12.

¹⁴ In making this determination, the Hearing Officer takes no position at this time as to the parties' contentions regarding jurisdiction (see *Motion to Dismiss*, pp. 8-11; *Response*, pp. 14-15, 18-19; *Reply*, p. 6; Transcript of Proceedings, December 11, 2001, p. 5) or administrative resources (see *Motion to Dismiss*, pp. 12-13; Transcript of Proceedings, pp. 34-35, 38-39).

conference for the purpose of establishing a new procedural schedule. Should the District Court not grant BellSouth's motion to dismiss, it shall be the responsibility of Global Crossing to inform the Hearing Officer whether Global Crossing intends to renew its *Motion to Dismiss* in this proceeding.

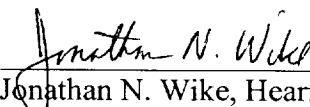
IT IS THEREFORE ORDERED THAT:

1. This docket shall be held in abeyance pending resolution of BellSouth's motion to dismiss pending in the United States District Court for the Northern District of Georgia in Civil Action No. 1:01-CV-2706.

2. The December 5, 2001 *Order Revising Procedural Schedule* is set aside.

3. Upon issuance by the District Court of a decision on BellSouth's motion to dismiss, it shall be the responsibility of the parties to inform the Hearing Officer of the substance of that decision.

4. Upon issuance by the District Court of a decision on BellSouth's motion to dismiss, it shall be the responsibility of Global Crossing to inform the Hearing Officer whether Global Crossing intends to renew its *Motion to Dismiss* in this proceeding.


Jonathan N. Wike, Hearing Officer

ATTEST:



K. Kavid Waddell, Executive Secretary